

**IN THE CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE  
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE**

|                                     |   |           |
|-------------------------------------|---|-----------|
| STATE OF TENNESSEE,                 | ) |           |
|                                     | ) |           |
| Petitioner,                         | ) |           |
|                                     | ) |           |
| v.                                  | ) | No. _____ |
|                                     | ) |           |
| FAIRFIELD RESORTS, INC., a Delaware | ) |           |
| corporation,                        | ) |           |
|                                     | ) |           |
| Respondent.                         | ) |           |

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**ASSURANCE OF VOLUNTARY COMPLIANCE**

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Pursuant to Tenn. Code Ann. § 47-18-107, the State of Tennessee, by and through Paul G. Summers, the Attorney General and Reporter ("Attorney General"), at the request of the Director of the Division of Consumer Affairs of the Department of Commerce and Insurance ("Division"), accept this Assurance of Voluntary Compliance ("Assurance") given by Fairfield Resorts, Inc., a Delaware corporation, located at 8427 South Park Circle, Orlando, FL 32819. Respondent Fairfield Resorts, Inc., is doing business in Tennessee and throughout the United States. Fairfield Resorts, Inc. ("Respondent" or "FRI") was formerly known as Fairfield Communities, Inc., and also formerly known as Fairfield Land Development Company.

**WITNESSETH:**

Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

A.     **The State's Position.** The Division and the Attorney General conducted an investigation of specific business practices of Respondent near Crossville, Tennessee. These practices include the mass marketing of undeveloped lots as investments and/or future home sites for a consumer's retirement years. During Respondent's sales promotions of the undeveloped lots, employees, their salesmen and others, made representations and commitments to the public regarding improvements, such as water, roads, and sewer installation and other amenities that would be provided in the near future. Even years later these improvements of lots, in areas sold to consumers, have not been provided or fulfilled. Respondent's business practices are more fully described in the Petition. As a result of the investigation, the Division and the Attorney General determined that certain acts and practices of Respondent violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.* (the "Act").

B.     **The Respondent's Position.** Respondent neither admits nor denies any wrongdoing and affirmatively states the following: "The specific business practices alleged primarily occurred in the 1970's and 1980's and all sales of lots offered and completed during this time and thereafter were made utilizing disclosure documents that were filed with a federal agency. This written documentation neither promoted the sale of the undeveloped lots on the basis of investment nor represented that utilities would be completed in the near future. The Respondent agrees to enter into this Assurance of Voluntary Compliance to bring closure to this matter and to fulfill the Respondent's longstanding commitment to Fairfield Glade."

C.     Pursuant to Tenn. Code Ann. § 47-18-107(c), acceptance of this Assurance by Respondent shall not be considered an admission of a prior violation of the Consumer Protection

Act. Therefore, pursuant to Tenn. Code Ann. § 47-18-107, Respondent desires to give this Assurance, and the Attorney General desires to accept it, in order to avoid the expense of litigation.

NOW, THEREFORE, acting pursuant to Tenn. Code Ann. § 47-18-107, Respondent gives, and the Attorney General accepts, the following assurances:

### **1. DEFINITIONS**

As used in this Assurance and accompanying Agreed Final Order, the following words or terms shall have the following meanings:

- 1.1 "Agreed Final Order", "Agreed Order" or "Order" shall mean the Agreed Final Order filed contemporaneously with this Assurance of Voluntary Compliance.
- 1.2 "Assurance of Voluntary Compliance" or "Assurance" shall refer to this document entitled Assurance of Voluntary Compliance in the matter of *State of Tennessee v. Fairfield Resorts, Inc.*, a Delaware corporation.
- 1.3 "Attorney General" shall refer to the Office of the Tennessee Attorney General and any employee or other staff acting on behalf of the Attorney General.
- 1.4 "Clear and Conspicuous" or "Clearly and Conspicuously": A statement is "Clear and Conspicuous" or "Clearly and Conspicuously" disclosed if, by whatever medium, it is readily understandable and presented in such size, color, contrast, location, and audibility, compared to other information with which it is presented, that is readily apparent to the person to whom it is disclosed. If such statement is necessary as a modification, explanation or clarification to other information with which it is presented, it must be presented in close proximity to the information it modifies, in a manner which is readily noticeable and understandable. Further, a disclosure of information is not clear and conspicuous if, among other things, it is obscured by the background against which it appears or there are other distracting elements. Warnings, safety disclosures or statements of limitation must be set out in close conjunction with the benefits described, or with appropriate captions, of such prominence that warnings, safety disclosures or statements of limitation are not minimized, rendered obscure, presented in an ambiguous fashion, or intermingled with the context of the statement so as to be confusing or misleading.
- 1.5 "Community Club" shall refer to Fairfield Glade Community Club, a Tennessee non-profit corporation.

- 1.6 "Consumer" means any person, a natural person, individual, governmental agency or other entities, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized, but not including, the Respondent.
- 1.7 "Developed lot" shall refer to real estate lots serviced by water, sewer, and paved roads.
- 1.8 "Division" or "Division of Consumer Affairs" shall refer to the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.
- 1.9 "Eligible consumer" shall refer to a consumer who is covered by the terms of this Assurance and as such eligible for the consumer relief set forth in the Assurance.
- 1.10 "Petition" shall refer to the Petition filed by the Attorney General's Office contemporaneously with the Assurance of Voluntary Compliance and the Agreed Final Order.
- 1.11 "Petitioner," "State of Tennessee," or "Attorney General" shall refer to the Office of the Tennessee Attorney General and Reporter.
- 1.12 "Respondent" or "FRI" shall refer to Fairfield Resorts, Inc., f/k/a Fairfield Communities, Inc., and f/k/a Fairfield Land Development Co., Inc., any corporate successors and bulk transferees of its lots at Fairfield Glade and any and all agents of same.
- 1.13 "Successor" or "heir" when referring to a consumer shall mean any person who acquired a real estate lot via inheritance, gift, or similar relationship.
- 1.14 "Tennessee Consumer Protection Act" or "Consumer Act" shall refer to the Tennessee Consumer Protection Act of 1977, as amended, and related statutes found at Tenn. Code Ann. §§ 47-18-101, *et seq.*
- 1.15 "Undeveloped" lot shall refer to real estate lots not serviced by water, sewer, and paved roads.

## **2. JURISDICTION**

2.1 Jurisdiction of this Court over the subject matter herein and over the person of the Respondent for the purposes of entering into and enforcing this Assurance and the accompanying Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the parties to

apply for such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Assurance and the accompanying Agreed Order, including enforcement of compliance therewith and assessment of penalties against Respondent for violation(s) thereof. Respondent agrees to pay all court costs and reasonable attorneys' fees and any costs associated with any successful petitions to enforce any provision of this Assurance and the accompanying Order against Respondent.

### **3. VENUE**

3.1 Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance is solely in the Circuit Court of Davidson County, Tennessee.

### **4. PERMANENT INJUNCTION AND REHABILITATION**

It is hereby agreed that upon approval of this Assurance by the Court, Respondent and anyone in concert with Respondent, shall, with the regard to the future sale of lots or homes in Tennessee, be permanently and forever enjoined, restrained and bound from directly or indirectly engaging in the practices set forth herein and affirmatively required as appropriate:

- 4.1 Respondent shall be prohibited from directly or indirectly engaging in any misleading, unfair or deceptive acts or practices in the conduct of its business. Respondent shall fully comply with all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.*, including but not limited to §§ 47-18-104(a) and (b)(27), which prohibit unfair and deceptive acts and practices.
- 4.2 Respondent shall not directly or indirectly, in any offer for sale of any real estate interest, represent, promote or otherwise indicate that the interest in real estate has a rate of return or term or phrase of similar import.
- 4.3 Respondent shall not directly or indirectly represent that goods or services have or will have sponsorship, approval, characteristics, ingredients, quantities, uses or benefits that they do not have or will not have.

- 4.4 Prior to consummation of any lot sale, Respondent shall affirmatively, clearly and conspicuously disclose in writing all material terms, conditions and restrictions associated with any offer or sale of a lot to a consumer. Such disclosures include, but are not limited to, the following terms:
- (A) Compulsory membership in any property owners' association necessitating the payment of dues or any other monetary obligations;
  - (B) All consequences of consumers' failure to pay all monetary obligations, including but not limited to membership dues to the property home owners' association, *e.g.*, inability to use amenities, if any, such as pools and golf courses, until dues are paid;
  - (C) All consequences of consumers' failure to pay the developer for the property;
  - (D) Rescission rights and refunds, including the name and address of the Respondent's office to contact regarding rescission and refunds. Respondent shall have a reasonable rescission policy designed to allow consumers a reasonable time to review their decision; and
  - (E) The estimated total costs to hook up to sewer, utilities and water supply.

Respondent's sales scripts, including oral representations made by its sales personnel during each sales presentation or any other contact with a consumer, its sales promotional materials and all training materials shall not be inconsistent with the above required disclosures and not in violation of any provision of this Assurance of Voluntary Compliance.

- 4.5 Respondent shall establish, implement and enforce a policy requiring that all oral representations of Respondent's sales personnel engaged in the sale of lots in Tennessee or to Tennessee consumers (including but not limited to employees and independent contractors) shall be consistent with all written representations of the Respondent.
- 4.6 Respondent shall not directly or indirectly represent that goods or services are of a particular standard, quality or grade, if they are of another.
- 4.7 Respondent shall not directly or indirectly advertise or promote goods or services without intent to sell as advertised and promoted.
- 4.8 Respondent shall not directly or indirectly represent that a consumer transaction confers or involves rights, remedies, or obligations that it does not have or involve or which are prohibited by law.

- 4.9 Respondent shall not directly or indirectly cause confusion or misunderstanding with respect to the authority of a salesperson, representative or agent to negotiate the final terms of a consumer transaction.
- 4.10 Respondent shall train its sales staff, including temporary or contract employees, involved in Respondent's lot/home sales in Tennessee or directed at Tennesseans about misrepresentations and other unfair and deceptive acts and practices as set forth in the Tennessee Consumer Protection Act, §§ 47-18-101, *et seq.* Respondent's training materials shall include but not be limited to, a copy of the Tennessee Consumer Protection Act, Tenn. Code Ann. §§ 47-18-101, *et seq.* A copy of this Assurance and Agreed Order shall be distributed to all Respondent's lot/home sales staff in Tennessee.
- 4.11 Respondent shall not directly or indirectly use or employ a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise or anything of value, which uses the sales technique, plan, arrangement or agreement in which the buyer or prospective buyer is offered the opportunity to purchase goods or services and, in connection with the purchase, receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller names of other prospective buyers if the receipt of compensation or consideration is contingent upon the occurrence of any event subsequent to the time the buyer purchases merchandise or goods or anything of value.
- 4.12 Respondent shall not directly or indirectly use statements or illustrations in any advertisement which create a false impression of the grade, quality, quantity, make, value, age, size, color, usability or origin of the goods or services offered, which may otherwise misrepresent the goods or services in such a manner that later, on disclosure of the true facts, there is likelihood that the buyer may be switched from the advertised goods or services to other goods or services.
- 4.13 Respondent shall not directly or indirectly represent to consumers that any additional improvements or amenities (or term of similar improvement or terms or phrase of similar import) will be made within a time frame or specific time if such is not the case. If the time frame or specific time is delayed due to unforeseen circumstances, the reason(s) for the unforeseen delay shall be documented and that information along with a projection for completion of the improvements or amenities in light of the unforeseen circumstances shall be distributed in writing by United States postage pre-paid first class mail to consumer lot owners within a reasonable time of learning of the delay.
- 4.14 Respondent shall not directly or indirectly represent that a sale of a lot comes with the benefits of a warranty, guaranty or trade-in program unless all terms and

conditions of such program are affirmatively, clearly and conspicuously disclosed in writing to consumers in advance of the purchase.

- 4.15 Respondent shall be required to affirmatively complete and honor any warranty, guarantee or trade in/exchange program as previously promoted in writing to a consumer.
- 4.16 After entry of this Assurance, all of Respondent's warranties, guarantees and trade-in/exchange programs shall be in writing and provided to the consumer prior to consummation of any sale.
- 4.17 Respondent shall be prohibited from directly or indirectly retroactively altering or changing a warranty, guarantee or trade-in program unless the change is to offer a greater benefit to consumers and consumer agrees it offers an increase in benefits.
- 4.18 Respondent shall be prohibited from representing or promoting that a consumer will receive a certain percentage or value appreciation per year (or term of phrase of similar import) of any good or service, including but not limited to the purchase of a lot, unless in fact that is the case.
- 4.19 Respondent shall be prohibited from using or employing any contracts, agreements or other documents which provide that the costs "are to be determined" or term or phrase of similar import.
- 4.20 Respondent shall be prohibited from representing that a consumer's rights were terminated in the reorganization bankruptcy of Fairfield Communities, Inc. and related entities, when such is not the case.
- 4.21 Within ten (10) days of entry of this Assurance, the Respondent shall affirmatively contact, in writing, all consumers whose information is on record with the Respondent (the Respondent has represented that such information dates back six (6) years) and who was previously notified with incorrect information regarding the bankruptcy and its impact upon the consumer. A copy of each such notification shall also be simultaneously provided to Attorney General. The required notification is attached hereto as Exhibit A. These consumers, who were incorrectly told by Respondent that the bankruptcy court cut off their rights, shall be treated as having complained before the entry of this Assurance and shall be categorized and obtain the same relief as complainants who complained before entry of this Assurance and the Agreed Final Order as provided in Sections 5 and 6 of this Assurance. Additionally, for a period of six (6) months after entry of the Assurance, consumers who can establish that Respondent incorrectly notified them that their rights were cut off by the bankruptcy shall have the same consumer relief set forth in the appropriate category as that offered other complainants who complained before entry of this Assurance, as provided in Sections 5 and 6 of this Assurance.



- 4.22 Prior to purchase of any lot/home, Respondent shall advise orally and in writing all consumers who indicate that they intend to purchase a lot/home, that they may take as much time as needed or required, to consider and review all contracts, documents and disclosures required herein, including allowing the consumers to take all materials with them to view away from sales office and/or salesperson.
- 4.23 Respondent shall establish, implement and enforce disciplinary consequences for any employee, temporary employee or independent contractor who violates any provision of this Order and/or the Tennessee Consumer Protection Act.
- 4.24 Respondent shall pay all applicable dues it is obligated to pay to the Community Club in a timely fashion for lots it owns.
- 4.25 Respondent shall not directly or indirectly discriminate between non-resident owners and resident owners in its development of lots, e.g., pavement of roads and access roads, proximity to sewer lines, making water available, or any other duties to the entire ownership.

## **5. CONSUMER RELIEF**

5.1 The Parties have agreed to consumer relief as part of the State's rehabilitation effort as set forth in this Assurance. The consumer relief is based on the current lot status of consumer lots at Fairfield Glade near Crossville, Tennessee. The universe of consumers to receive relief consists of those whose written complaints were submitted to the Tennessee Attorney General, the Tennessee Division of Consumer Affairs, Tennessee Real Estate Commission, any entity of the State of Tennessee, any Better Business Bureau in the State of Tennessee or Florida, the Respondent or the Fairfield Glade Community Club on or before the date of entry of this Assurance and the Agreed Order and all records reflecting telephone calls between consumers and the Tennessee Attorney General's office or the Tennessee Division of Consumer Affairs on or before the date of entry of this Assurance and the Agreed Order. The categories below are determined by the current status of the applicable lots. Respondent represents and warrants that the approximate value of the rehabilitation program set forth in Section 5 is approximately Four Million Dollars (\$4,000,000.00). If the eligible

consumer disputes the category to be applied or the calculation of the amount paid, the eligible consumer has the option of arbitration, pursuant to Section 5.10 of this Assurance.

5.2 Within twenty-one (21) days of entry of this Assurance of Voluntary Compliance the first wave of notices to consumers shall be mailed by the Respondent and all initial notices shall be sent by the Respondent no later than seventy-five (75) days of entry of this Assurance of Voluntary Compliance<sup>1</sup>, Respondent shall send a notice attached as Collective Exhibit B via certified mail to the last known address of eligible consumers, and shall re-send to any address located, to all eligible consumers as set forth in Section 5.1. Respondent shall provide a pre-addressed postage pre-paid return envelope with the notice. Within fourteen (14) days of entry of this Assurance, the Respondent shall provide the Attorney General with an alphabetical list by last name of the names and last known addresses of the eligible consumers under Section 5.1 to whom Respondent shall send notice pursuant to this Assurance. The parties acknowledge that to the best of their belief, all such eligible consumer information has been provided to the Respondent except the Attorney General will contact the other entities of state government and the Better Business Bureaus to obtain their records of consumer information eligible under Section 5.1 within ten (10) days of entry of this Assurance. The Attorney General will request that the responding entity provide a letter or other certification that the records provided represent the consumer information received by the entity prior to entry of the Assurance of Voluntary Compliance. The information, once received, will be provided to Respondent. The Attorney General shall have a reasonable time to obtain the needed consumer information from the other entities of state government and the Better Business

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<sup>1</sup>The purpose of the 21-75 day period is to permit the Respondent to conduct a phased or staggered mailing to be in a better position to handle consumer calls relating to the mailings.

Bureaus, except as set forth herein, not to exceed sixty (60) days after the date of receipt of the request unless the Attorney General is required to serve statutory legal process to receive the information. In that situation, the Attorney General will work with the Respondent to provide the information within as short a time frame as is reasonable under the circumstances and the parties agree it may exceed sixty (60) days. Any consumer information received by the Attorney General from these entities will be provided to the Respondent within ten (10) business days of receipt.

5.3 The following “complaint categories” apply for consumer relief under this Assurance:

**(A) Consumers or successors who still own a lot.**

Consumers who submitted a complaint to any one of the specific entities listed in Section 5.1 prior to entry of the Assurance shall be eligible for relief if the consumer or successor/heir currently owns the lot referenced in their complaint (or the lot is currently owned by an successor or heir of the consumer/complainant) and the consumer returns the claim form notice or re-sent notice postmarked within sixty (60) days of mailing the specific notice to the particular consumers. Consumers qualifying in this category shall have the following relief options:

(i) If the lot is not currently developed, the consumer may elect to deed the lot back to the Respondent, free and clear of all liens and encumbrances related to a mortgage or past due property taxes but the consumer shall have no obligation to bring current any obligations relating to Community Club assessments, using a special warranty deed (this deed shall in no way require a consumer to pay for any fees, transfer taxes, title searches, title policies or any other costs to deed the property back to Respondent) form which is subject to the approval of the Attorney General and receive a refund of sixty-five (65%) of the purchase price paid by the eligible consumer for the lot. If the lot was inherited or gifted to the eligible consumer, the refund shall be 65% of the purchase price paid by the person from whom the lot was inherited or person giving the lot to the eligible consumer. Said refund will be provided by Respondent within no more than three (3) weeks of receipt of the request and the executed deed; Respondent shall respond to a consumer’s claim form requesting this option by sending the applicable refund check along with the letter

attached as Exhibit C. No promotional materials may be included with this mailing and it shall be sent by certified, return receipt requested mail postage paid with envelopes approved by the Attorney General and clearly marked "Postmaster: Please Forward and Address Correction Requested"; or

(ii) If the consumer's lot is not currently developed and the consumer purchased the lot directly from the Respondent, the consumer or the consumer's successors or heirs may trade the lot to a Fairfield-owned developed lot with a current purchase price of at least the price paid for the consumer's lot and up to 150% of the amount of the consumer's purchase price for the lot he/she is trading. If the lot was inherited or gifted to the consumer, the refund shall be based on the purchase price paid by the person from whom the lot was inherited or the purchase price paid by the person who gave the consumer the lot. Respondent will first determine the number of trade requests received under this relief option. If Respondent has a sufficient number of developed lots available for trade, the consumer will be provided with a traded lot. This option is available on a first come first serve basis. No consumer electing this trade option will be asked to pay any additional money for an exchanged or traded lot. The Respondent shall provide an exchanged lot for each consumer that requests a trade or exchange pursuant to this Assurance, even if it means Respondent provides a lot of a greater value to the consumer beyond the 150% value at no cost to the consumer. The 150% amount is not a limit on trade-in values. Respondent shall be required to have sufficient lots to trade within the 150% value or must trade to greater value lots at no cost to the consumer. In the unlikely event that Respondent does not have sufficient developed lots available for the trade in requests, Respondent shall develop additional lots within eleven (11) months of entry of this Assurance of Voluntary Compliance. Respondent shall develop paved roads and paved access roads and water and shall cooperate with the Fairfield Glade Community Club in its sewer installation efforts. At the consumer's election, he/she may, upon notice that no developed lot is immediately available for trade in, choose to deed their undeveloped lot back to Fairfield and receive sixty-five percent (65 %) of the consumer's purchase price within no more than three (3) weeks of Respondent's receipt of the request from the consumer. If the property was inherited or gifted to the consumer, the refund shall be based on the purchase price paid by the person from whom the lot was inherited or the purchase price paid by the person who gave the consumer the lot. Respondent shall respond to a consumer's claim form requesting this option by sending the letter and deed attached as Collective Exhibit D. No promotional materials may be included with this mailing and it shall be sent by certified, return receipt requested mail postage paid with envelopes approved by the Attorney General and clearly marked "Postmaster: Please Forward and Address Correction Requested".

Any consumer with a developed lot or with an existing home on his/her lot is not eligible for relief under this category.

**B. Consumers or successors who sold lots for 30% or less of the purchase price.**

Consumers who submitted a complaint to any one of the entities listed in Section 5.1 prior to entry of the Assurance shall be eligible for relief if the consumer or successor sold the lot for thirty percent (30%) or less of the purchase price and the consumer returns the refund form notice or re-sent notice postmarked within sixty (60) days of mailing the specific notice to the particular consumer. Within three (3) weeks of making a request and submission of applicable documentation relating to the sale of the lot (if this documentation is not already in Respondent's records), consumers qualifying in this category shall be paid fifty percent (50%) of their lot purchase price, less the amount received in the sale of the lot, plus all documented or readily ascertainable sales expenses, including but not limited to, commissions, auction fees, transfer and title transfer fees and taxes. If the property was inherited or gifted to the consumer, the refund shall be based on the purchase price paid by the person from whom the lot was inherited or the purchase price paid by the person who gave the consumer the lot. For example, if a consumer's original purchase price for a lot was \$10,000.00 and it was sold at auction for \$1,000.00 and the auction fees, title and transfer fees were \$500.00, the consumer's refund would be calculated as follows:

|                   |                         |
|-------------------|-------------------------|
| \$10,000.00       | original purchase price |
| <u>- 1,000.00</u> | lot sale price          |
| \$ 9,000.00       |                         |
| <u>+ 500.00</u>   | expenses of sale        |
| \$ 9,500.00       |                         |
| <u>x 50%</u>      |                         |
| \$ 4,750.00       | refund amount           |

Respondent shall respond to a consumer's claim form requesting this relief option by sending the applicable refund check and the letter attached as Exhibit E. No promotional

materials may be included with this mailing and it shall be sent by certified, return receipt requested mail postage paid with envelopes approved by the Attorney General and clearly marked "Postmaster: Please Forward and Address Correction Requested".

No consumer receiving more than 30% at the time of sale of the purchase price of their lot is eligible for relief under this consumer relief category.

**C. Consumers or successors who lost their lot to foreclosure, deed in lieu of foreclosure or voluntary surrender.**

Consumers who submitted a complaint to any one of the entities listed in Section 5.1 prior to entry of the Assurance shall be eligible for the consumer relief if the consumer's heirs or successors lost their lot to foreclosure, deed in lieu of foreclosure or voluntary surrender and the consumer returns the claim form notice postmarked within sixty (60) days of mailing the specific notice to the particular consumers. Within three (3) weeks of making a request and the consumer providing documentation establishing the foreclosure, deed in lieu of foreclosure or voluntary surrender (if this information has not already been provided or is in Respondent's or the Community Club's records), consumers qualifying in this category shall be paid a refund by Respondent of fifty percent (50%) of all assessments paid on their lot to the Fairfield Glade Community Club by the original purchasers/consumer, by consumer's heirs and/or assigns who paid assessments or dues on the lot before losing or forfeiting it to the Club. Respondent shall respond to a consumer's claim form requesting this relief option by sending the applicable refund check and the letter attached as Exhibit

F. No promotional materials may be included with this mailing and it shall be sent by certified, return receipt requested mail postage paid with envelopes approved by the

Attorney General and clearly marked “Postmaster: Please Forward and Address Correction Requested”.

**5.4 Consumer complaint or consumer information does not specify lot status.**

Investigation by the Respondent and the Fairfield Glade Community Club shall determine, within twenty (20) days of entry of this Assurance, if not before, which category of lot(s) status may be applicable to that particular consumer and shall provide the benefits described in the appropriate lot(s) status. If reasonable investigation by Respondent cannot determine the lot status, Respondent shall mail by certified, return receipt requested first class postage pre-paid, the letter and notice attached as Collective Exhibit G, the consumer shall have sixty (60) days from receipt of the mailing to return the claim form to be eligible for the consumer relief option described in this Assurance. No promotional materials may be included with this mailing and it shall be sent in envelopes approved by the Attorney General and clearly marked “Postmaster: Please Forward and Address Correction Requested”.

**5.5 Consumer who falls into more than one category listed.** Any eligible consumer who falls into multiple consumer relief categories listed above shall have their choice of category benefit options. (If more than one lot is or was owned by a single eligible consumer, that eligible consumer can have the benefit of any consumer relief category applying to each particular lot.)

**5.6** Any eligible consumer pursuant to Section 5.1 who was inadvertently omitted from the consumer list shall be eligible for the applicable consumer relief categories listed above if one party to this agreement notifies the other party of an omission of an eligible consumer within ninety (90) days of entry of this Assurance.

5.7 Except as agreed in writing by the parties, the lists and reports under Sections 5.2, 6.3 and 6.12 provided to the State of Tennessee and in the possession of the Respondent shall not be released to any person to protect the interest of consumer privacy, to prevent further marketing to these consumers and possible identity theft.

5.8 Respondent also agrees that the consumer names, addresses, telephone numbers and other personally identifiable information gathered or otherwise obtained during this consumer relief program will not be used for any marketing purposes or provided to any other person for any reason including but not limited for the purposes of marketing these consumers now or in the future.

5.9 If any consumer's notices are returned as "undeliverable" by the Postmaster, the Respondent shall employ reasonable "skip tracing" techniques for a period not to exceed one hundred twenty (120) days. If the consumer's notice remains "undeliverable" after resending to the new address found by skip tracing, Respondent will publish a notice from the Attorney General in the form attached hereto as Exhibit H. Within ten (10) days of completion of Respondent's skip tracing efforts, the Respondent and the Attorney General agree to determine the final locations to place appropriate advertisements designed to reach the consumers on the list. The parties agree to take into account the number of unlocated consumers and where they last resided when determining the final list of publications where the advertisements will be placed. However, the parties agree that all advertisements will be at least six (6) inches by eight (8) inches and shall run at least two consecutive Saturdays and Sundays, within sixty (60) days of establishing the final list of consumers who cannot be located. The advertisements are expected to be placed in the *Crossville Chronicle*, *The Glade Sun*, and any other Fairfield Community Club Publications, *USA Today*, the *Tennessean* and the *Knoxville News-Sentinel* provided that these publications are appropriate in light of the



number of unlocated consumers and the last known addresses of those consumers. The advertisements will not be placed in the classified or other legal notices section of the publications but instead will be in the front sections of these publications in a clear and conspicuous location agreed upon the parties with the goal of locating and reaching the consumers on the list. Consumers located through this advertisement process shall be mailed the applicable notice required to be sent to other consumers via certified, first class mail and the eligible consumer shall have an additional sixty (60) days from the date of mailing to respond to be eligible for the consumer relief categories. All costs associated with the publication and preparation of the notice required in this paragraph shall be paid by the Respondent.

5.10 **Consumers have an option to appeal to an independent arbitrator.**

A. Should any complaining consumer disagree with the applicable consumer relief category status assigned to him/her or the amount paid under the Assurance based on the established formulas and procedures set forth herein after providing written verification of their current status to Respondent and Respondent disagrees with the consumer, the consumer may appeal to an independent arbitrator for resolution of any dispute, at Respondent's cost. The arbitrator's decision is final and binding upon the consumer and Respondent for the purposes of this Assurance.

B. If any eligible consumers contend they have been placed into the incorrect consumer relief category for restitution purposes or incorrectly paid by Respondent under this Assurance of Voluntary Compliance, once Respondent learns of this dispute and disagrees with the consumer's position, Respondent shall send the eligible consumer via first class, United States mail postage pre-paid, the letter and arbitration request form attached as Collective Exhibit I which shall inform the eligible consumer of the reason for the classification and/or calculation of his/her restitution and inform him/her of the option to submit his/her claim to an Arbitrator. Eligible consumers must mail their election for arbitration within sixty (60) days of the mailing of Collective Exhibit I. The postmark of the consumer's mailing shall determine whether it is received in a timely manner. No other materials shall be included with this mailing. No promotional materials may be included with this mailing and it shall be sent in envelopes approved by the Attorney General and clearly marked "Postmaster: Please Forward and Address Correction Requested".

C. Within thirty (30) days of entry of this Assurance, the Arbitrator shall be selected jointly by agreement of the Director of the Division of Consumer Affairs, the Attorney

General and the Respondent. The Arbitrator shall be a licensed attorney with an office located within a thirty (30) mile radius of the Attorney General's Office in Nashville, Tennessee.

D. Once the Arbitrator is selected, Respondent and the Arbitrator shall enter into a contract providing for the method of payment for his/her services and requiring the Arbitrator to comply with the terms of the Assurance and Agreed Order, and to respond to requests for information by the Attorney General and Division of Consumer Affairs, within ten (10) days of a written request, with copies of records, documents and reports reasonably necessary to ascertain the performance of the Respondent and the Arbitrator and their obligations under this Assurance as to the eligible consumers and to determine, based on credible evidence, compliance with the terms of this Assurance and Agreed Order.

E. The Arbitrator shall review each timely request for arbitration and other information within a reasonable time, not to exceed sixty (60) days after receipt of the arbitration form and other information from the Respondent. The Arbitrator shall make his/her decision based on the written submission but may make a written request for additional information in writing from either the Respondent or the eligible consumer and/or the Attorney General's Office.

F. The Arbitrator shall review timely submissions of dispute based on a credible evidence standard. If the Arbitrator determines that there is credible evidence that the eligible consumer has essentially complied with the necessary terms to be eligible for restitution or explained why the refund calculation is incorrect and the eligible consumer's request is eligible for reimbursement under a different consumer relief category or for an additional refund, the Arbitrator shall decide for the eligible consumer. If the Arbitrator believes the Respondent has fully complied with each requirement of the Assurance and Agreed Order and therefore the eligible consumer is not eligible for reclassification or recalculation of the reimbursement due to him/her, the Arbitrator shall decide for the Respondent.

G. The Arbitrator shall notify the eligible consumer and the Respondent of his or her decision by United States mail first class postage, pre-paid, within ten (10) business days of the decision. The envelopes used for these mailings shall be clearly and conspicuously marked "Postmaster: Address Correction Requested". If the Arbitrator decides for the eligible consumer, such notification shall include the amount awarded the specific consumer based upon the reclassification and/or recalculation. Respondent shall make any restitution payment awarded by the Arbitrator, subject to the limitations contained herein, within thirty (30) days of receipt of the Arbitrator's decision regarding each particular eligible consumer. When Respondent mails the restitution payment to the eligible consumer, Respondent shall also send a copy of Exhibit J. No other materials other than Exhibit J and the check shall be sent in this mailing. It shall be sent by certified, return receipt requested mail postage paid with envelopes approved by the Attorney General and clearly and conspicuously marked "Postmaster: Please Forward and Address Correction Requested".

H. If the Arbitrator decides for the Respondent, the Arbitrator shall so notify the eligible consumer and the Respondent of the decision within ten (10) business days by United States mail first class postage, pre-paid. The envelopes used for the mailings set forth in (F) and (G) shall be approved by the Attorney General and Clearly and Conspicuously marked "Postmaster: Please Forward and Address Correction Requested."

I. Each decision of the Arbitrator is final and not appealable by the State, the Respondent or the eligible consumer; however, it shall not restrict the consumer's private rights pursuant to Section 10.1. Both the State and Respondent retain the right to object to the process of review by the Arbitrator and seek relief from such process as permitted by applicable law.

J. Respondent shall make available to the Arbitrator, at no cost, and upon reasonable notice, all documents, persons and other information reasonably necessary to the Arbitrator to make a decision regarding an eligible consumer who sought arbitration pursuant to this section.

5.11 The parties agree that it is their intent that neither the Respondent nor the consumer shall be held responsible for any past due Community Club assessment obligations being passed to them as a result of a consumer deeding a lot to them under the rehabilitation program set forth in Section 5 of this Assurance of Voluntary Compliance. However, once the lots are deeded to Respondent, Respondent will be responsible for ongoing assessment obligations to the Community Club associated with the lot.

5.12 The parties may agree in writing by mutual agreement to extend any time line or deadline set forth in the consumer relief section of this Assurance.

## **6. CONSUMER RELIEF/RESTITUTION PROCEDURES**

6.1 Within twenty-one (21) days of entry of this Order, the Respondent shall mail a packet of material described in Section 5. Such packet of materials shall include a letter from the Attorney General of the State of Tennessee (attached hereto as Exhibit Collective B) printed on letterhead chosen at the sole discretion of the Attorney General, the claim form to return to participate in this consumer restitution program, and a pre-addressed, postage prepaid envelope.

Consumers with the option to receive consumer relief under this Assurance in Section 5, shall indicate their election by returning the claim form enclosed in the packet within sixty (60) days of the mailing of the packet to a particular consumer. The timeliness of a refund claim form or request to trade in shall be determined by the postmark on the mailing. Respondent shall provide monetary relief, as described in Section 5, within ninety (90) days of Respondent's mailing of the packet or three (3) weeks from the date of Respondent's receipt of the consumer's response, whichever is shorter. Consumers who are offered the option to trade to another lot in Section 5 shall indicate their option by returning the form enclosed in the packet within sixty (60) days of the mailing of the packet. Consumers who do not respond within sixty (60) days of the mailing of the specific packet attached as Collective Exhibit B will not be subject to any restitution under this Assurance except as otherwise set forth herein.

6.2 The Respondent shall provide written notice to the Attorney General establishing the required advertisements were published on the required dates and in the required locations and formats for each agreed upon publication within ten (10) business days of publication of those advertisements.

6.3 The packet of materials required by Section 5 shall be mailed through the United States Postal Service via certified, first class mail postage pre-paid. All envelopes will be chosen at the sole discretion of the Attorney General and must be clearly marked "POSTMASTER: PLEASE FORWARD AND ADDRESS CORRECTION REQUESTED." In the event any envelope is returned with a corrected or forwarding address, Respondent shall again mail the full package to the consumer through the United States Postal Service via certified, first class postage pre-paid mail to the correct address. For said consumers, the sixty (60) day period set forth in Section 6.1 shall

not commence until the date of mailing the second notice and packet to the consumer's corrected address. The Attorney General shall receive written notification of the name, corrected address and date of mailing the second notification to any consumer within five (5) days of mailing the second notice.

6.4 The refund claim form or trade-in option form chosen by the consumer, under the appropriate category set forth in Section 5, must be postmarked no later than sixty (60) days of mailing of the specific packets to the applicable eligible consumers.

6.5 Respondent shall be prohibited from including any other materials, including promotional materials, with any mailing required by this Assurance.

6.6 Consumer refunds shall be by check drawn on an account with sufficient cash balance to fund all refunds in accordance with this Assurance. All consumer refunds shall be mailed by certified, first class United States postage pre-paid mail within ninety (90) days of the receipt of the refund request along with the required letter as set forth in Section 5. Envelopes shall be marked "Postmaster: Please Forward and Address Correction Requested" and refunds shall be re-mailed in the same fashion with an address correction, where applicable.

6.7 Any consumer refund check due to a consumer who is now deceased shall be made payable to the "Estate of" that particular consumer. Respondent shall have no liability or further responsibility for identifying the correct consumer to receive a check in such an estate situation. However, if the check is uncashed or undeliverable, it shall be turned over to State of Tennessee's unclaimed property as set forth herein.

6.8 Any consumer refund check due to multiple parties where the property is jointly owned shall be issued to all persons listed as property owners on the deed. Respondent shall have

no liability or further responsibility for identifying the correct consumer to receive a check in such multiple owner situations. However, if the check is uncashed or undelivered, it shall be turned over to State of Tennessee's unclaimed property as set forth herein.

6.9 Any consumer refund check due to consumers who are now divorced shall be jointly issued to both the former husband and former wife. Respondent shall have no further liability or responsibility for identifying the correct consumer to receive a check in a divorce situation. However, if the check is uncashed or undelivered, it shall be turned over to State of Tennessee's unclaimed property fund as set forth herein.

6.10 In the event a refund or restitution check is issued to a consumer under Section 5 of this Assurance of Voluntary Compliance and it is not cashed or it is returned undeliverable to the Respondent after using skip tracing, those funds due such consumers shall be treated as unclaimed property in the possession of the State of Tennessee pursuant to the Uniform Disposition of Unclaimed Property Act, Tenn. Code Ann. § 66-29-101, *et seq.* These funds may be delivered to the Treasurer prior to the statutory due date of one (1) year set forth in Tenn. Code Ann. § 66-29-110, covering unclaimed property held by courts, public officers and agencies. The Respondent shall provide a report to the Attorney General and Reporter within twelve (12) months of the entry of the Assurance which details the amount delivered to the Treasurer for treatment as unclaimed property under the state statute. A copy of each report to the Treasurer regarding unclaimed property shall be provided to the Attorney General under State law. *See* Tenn. Code Ann. § 66-29-113.

6.11 Respondent is responsible for all costs associated with the consumer relief/rehabilitation/restitution process set forth in Sections 4, 5 and 6, including, but not limited to,

arbitrator costs, all costs associated with the mailing and content of the packet of materials, notices, all letterhead, envelopes, copying charges, postage and costs associated with the issuance of refund checks and costs associated with the trade-in process.

6.12 Within twelve (12) months of entry of this Order, the Respondent shall file with the Attorney General the following information:

- A. A report of all monies paid to consumers who, under the appropriate categories listed in Section 5 elected to obtain a partial refund of their purchase price. Such report shall verify and certify that eligible consumers who opted for a partial refund from the Respondent have, in fact, received the refund required by this Order. Additionally, the Respondent shall verify and certify compliance with each provision of this Assurance with respect to exchange or trade of lots, costs and development of lots. Such reports shall be supplemented as needed.
- B. An alphabetical list by last name of the full name and address of each consumer who requested an exchange to a developed lot along with identification of the date a developed lot was provided and or will be provided and the approximate value of the lots received as a trade in. Such reports shall be supplemented as needed.
- C. An alphabetical list by last name of the full name and address of each consumer who requested the monetary relief provided herein and the amount of each individual consumer's refund and the total amount of all refunds provided. Such reports shall be supplemented as needed.
- D. The Attorney General may request interim reports or lists prior to the 12 month period. Respondent will respond to such requests within a reasonable amount of time not to exceed thirty (30) days from receipt of said request.
- E. An acknowledgment that each officer, director or employee of Respondent engaged in lot/home sales in Tennessee has received a copy of this Assurance and has certified to having read it.

6.13 Within ten (10) days of receipt of a request from the Attorney General or Division of Consumer Affairs Division for evidence that a specific consumer or consumers have received the required packet and/or their refunds, or exchanges, or evidence of promised development of lots,

Respondent shall provide written verification by providing any documents, books and records necessary to establish to the satisfaction of the Attorney General or Director of the Division of Consumer Affairs that the money portion of the rehabilitation process has been completed in compliance with this Assurance and that the other rehabilitation efforts, exchange for developed lots and/or developing lots with improvements, as agreed to by Respondent, have been achieved or will be achieved within twelve (12) months of entry of this Assurance. Such documents shall include, but not be limited to, copies of the front and back of canceled checks (or other proof of payment of restitution amounts which establish that a particular eligible consumer received their restitution payment) and/or mailing records along with certified mail receipts indicating that the specific consumer or consumers received the required restitution amounts or the exchanged lots or are having their lot developed and improved with all costs borne by the Respondent. This paragraph shall in no way limit the Attorney General's option to obtain documents, records and/or testimony pursuant to section 9 or any other law, regulation or rule.



## **7. ATTORNEYS' FEES AND COSTS TO THE STATE**

7.1 The Respondent shall pay the sum of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) to the State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General. Said payment shall be made by providing the Attorney General or his designated representative a check backed by good and sufficient funds made payable to the "Treasurer, State of Tennessee - Attorney General" on the day of execution of this Assurance.

7.2 Seventy-Five Thousand and 00/100 Dollars (\$75,000.00) of the attorneys' fees and costs set forth in Section 7.1 shall be paid to the Tennessee Division of Consumer Affairs to reimburse the Division for costs charged to it and for additional costs and expenses, which shall be used for consumer protection purposes at the sole discretion of the Director of the Division of Consumer Affairs.

## **8. CIVIL PENALTIES**

8.1 For remedial purposes, the Respondent shall pay the sum of Fifty Thousand and 00/100 Dollars (\$ 50,000.00) to the State of Tennessee as a civil penalty pursuant to Tenn. Code Ann. § 47-18-108(b)(3). Said payment shall be made by providing the Attorney General or his designated representative a check backed by good and sufficient funds made payable to the "Treasurer, State of Tennessee - Civil Penalties" on the day of execution of this Assurance.

## **9. MONITORING AND COMPLIANCE**

9.1 Upon request, Respondent agrees to provide books, records and documents to the Attorney General or Division of Consumer Affairs, at any time, and further, to informally or

formally under oath, provide testimony and other information to Attorney General or Division of Consumer Affairs, relating to compliance with this Assurance. Respondent shall make any requested information available within one (1) week of the request, at the Office of the Attorney General, Consumer Advocate and Protection Division, the John Sevier State Office Building located at 500 Charlotte Avenue, Nashville, Tennessee, or alternatively, at any other location within the State of Tennessee that is mutually agreeable in writing to Respondent and the Attorney General. This section shall in no way limit the Attorney General or Division of Consumer Affairs' right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

9.2 The Attorney General or the Division of Consumer Affairs have the right to test shop Respondent for the purpose of confirming compliance with this Assurance and state law. The test shoppers are not required to disclose that they are representatives of the State of Tennessee when making contact with Respondent. Further, the State of Tennessee may record any or all aspects of its solicitations or visit(s) with Respondent in audio or video form without notice to Respondent. The Respondent agrees to void any sale that is commenced by a test shopper at the conclusion of the sale upon notification that it was test shopping conducted by the State.

## **10. PRIVATE RIGHT OF ACTION**

10.1 Pursuant to Tenn. Code Ann. §§ 47-18-109 and 47-18-107(e), nothing in this Assurance shall be construed to affect any private right of action that a consumer/person may hold against Respondent.

## **11. PENALTY FOR FAILURE TO COMPLY**

11.1 Pursuant to Tenn. Code Ann. § 47-18-107(c), Respondent understands that upon execution and filing of this Assurance, (subject to Section 13.24) any subsequent failure to comply

with the terms hereof is prima facie evidence of a violation of the Tennessee Consumer Protection Act.

11.2 Pursuant to Tenn. Code Ann. § 47-18-107(f), Respondent understands that any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties and sanctions, including but not limited to contempt sanctions and the imposition of attorneys' fees and costs. Respondent agrees to pay all court costs and attorneys' fees associated with any successful petitions to enforce this Assurance and Agreed Order against the Respondent.

## **12. REPRESENTATIONS AND WARRANTIES**

12.1 Respondent represents and warrants that the execution and delivery of this Assurance is its free and voluntary act, that this Assurance is the result of good faith negotiations, and that Respondent agrees that the Assurance and terms hereof are fair and reasonable. The parties warrant that they will implement the terms of this Assurance in good faith. Further, no offer, agreements, or inducements of any nature whatsoever have been made to it by the State of Tennessee, its attorneys or any employee of the Attorney General 's Office or the Division of Consumer Affairs to procure this Assurance.

12.2 Respondent represents that signatories to this Assurance have authority to act for and bind the Respondent and to act for and bind successors in interest.

12.3 Respondent and its successors in interest agree that any future, additional successors in interest shall be bound by the terms of this Assurance and Agreed Order.

12.4 Respondent warrants and represents that Fairfield Resorts, Inc. is the proper party to this Assurance and the accompanying Agreed Order.

12.5 Respondent warrants and represents that Fairfield Resorts, Inc. is the true legal name of the entity entering into this Assurance and accompanying Agreed Order.

12.6 Respondent represents and warrants that it will coordinate and cooperate with the Fairfield Glade Community Club to select an area for development and for the placement of sewer if additional lots are needed for eligible consumers selecting a lot trade option under this Assurance such that the expense associated with the placement of sewers will be reduced.

12.7 Respondent represents and warrants that its present business intent is to continue to develop its properties in Fairfield Glade, Tennessee. Further, Respondent represents and warrants, it will use its best efforts to cooperate and engage in good faith negotiations with Fairfield Glade Community Club to achieve a mutually agreeable plan of development at Fairfield Glade near Crossville intended to provide for paved roads, water, and sewer access for undeveloped lots on an ongoing basis. Development pursuant to such plan shall be conditioned on factors agreed upon by Respondent and the Fairfield Glade Community Club.

12.8 Respondent further acknowledges and understands that the Attorney General expressly relies upon all of the representations and warranties set forth herein, and that if they are false, unfair, deceptive, misleading or inaccurate, the Attorney General has the right to move to vacate or set aside this Assurance, if the Attorney General so elects.

### **13. GENERAL PROVISIONS**

13.1 Respondent will not participate directly or indirectly in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

13.2 Neither Respondent nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance, or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Respondent.

13.3 Acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondent's advertising or other business practices.

13.4 Within thirty (30) days of the entry of this Assurance, Respondent shall submit a copy of this Assurance to each of its officers, directors, employees and any third parties who act directly or indirectly on behalf of the Respondent as an agent, independent contractor or who are involved in conducting any lot sales in the State of Tennessee. Within forty-five (45) days of entry of this Assurance, Respondent shall provide the Attorney General with an affidavit verifying and certifying that all required persons, including any known successors in interest have been supplied with a copy of this Assurance.

13.5 This Assurance and the accompanying Agreed Order may only be enforced by the parties hereto.

13.6 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

13.7 This document shall not be construed against the "drafter" because both parties participated in the drafting of this document.

13.8 This Assurance and the accompanying Agreed Order constitutes the complete agreement of the parties with regard to the resolution of the matters set forth in the State's Petition. This Assurance is limited to resolving only matters set forth in the State's Petition.

13.9 Nothing in this Assurance shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Assurance shall not bar the State, the Tennessee Department of Financial Institutions, the Tennessee Real Estate Commission, or any other governmental entity from enforcing laws, regulations or rules against Respondent.

13.10 Upon entry, this Assurance of Voluntary Compliance shall be binding and effective against Respondent and Respondent's corporate successors in interest, including other businesses, however organized, and assigns and upon said successors in interest of Respondent's interests at Fairfield Glade. The obligations, responsibilities, duties, rights and privileges set forth in this Assurance of Voluntary Compliance shall be binding upon Respondent, including Respondent's corporate successors in interest, or other types of businesses, however organized, who acquire Respondent's lots at Fairfield Glade in Crossville, Tennessee. The parties agree that the Attorney General will record the Agreed Order and Assurance of Voluntary Compliance, and all exhibits thereto, in the office of the Clerk of the Davidson County Circuit Court.

13.11 In the event the court does not approve this Assurance, this Assurance shall be of no force and effect against the State of Tennessee or Respondent.

13.12 Nothing in this Assurance constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

13.13 Respondent's payments under the terms of this Assurance constitute remedial action such as civil restitution in the public interest under the State's police power and shall not be considered in any form or manner as punitive in effect or nature for any purpose.

13.14 No waiver, modification, or amendment of the terms of this Assurance shall be valid or binding unless made in writing, signed by the both parties, approved by the Court and then only to the extent set forth in such written waiver, modification or amendment.

13.15 Any failure by any party to this Assurance and the Agreed Order to insist upon the strict performance by any other party of any of the provisions of this Assurance and the accompanying Agreed Order shall not be deemed a waiver of any of the provisions of this Assurance and the accompanying Agreed Order, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Assurance and Agreed Order and the imposition of any applicable penalties, including but not limited to contempt, civil penalties and/or the payment of attorneys' fees to the State.

13.16 If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance and this Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not be contained herein.

13.17 Respondent waives any and all challenges in law or equity to the entry of the Assurance and Agreed Order by the courts. Further, Respondent waives any right to appeal, petition for certiorari, move to reargue or rehear or to otherwise be heard in connection with any judicial proceedings under this Assurance and Agreed Order.

13.18 Time shall be of the essence with respect to each provision of this Assurance that requires action to be taken by either party within a stated time period or upon a specified date.

13.19 This Assurance sets forth the entire agreement between the parties, and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Assurance which are not fully expressed herein or attached hereto.

13.20 Respondent, Fairfield Resorts, Inc., f/k/a Fairfield Communities Inc. and Fairfield Land Development Company shall fully comply with all final Tennessee court orders to which it was a party, and the Fairfield Glade Community Club through its members as derivative shareholders was a party.

13.21 Nothing in this Assurance or the accompanying Agreed Order shall be construed to waive any claims of Sovereign Immunity the State may have in any action or proceeding.

13.22 Respondent hereby expressly waives and relinquishes any and all rights, remedies, appeals or other interests that they may possess to a jury trial or any derivative rights that flow from a trial by jury under the Tennessee Constitution or United States Constitution or any other law, regulation or rule.

13.23 If Respondent has fully complied with all the terms of this Assurance and state law and Respondent avers under oath to this Court that it has so complied with this Assurance and state law and Respondent will no longer sell lots in the State of Tennessee, Respondent may file a motion to relieve it of its obligations under the injunctive provisions of this Assurance, the Attorney General will not oppose such a motion.

13.24 If the Attorney General determines that Respondent has failed to comply with the terms of this Assurance and if in the Attorney General's sole discretion, the failure to comply does not threaten the health or safety of the citizens of the State of Tennessee or elsewhere, the Attorney



General agrees to notify Respondent of such failure to comply and Respondent shall have ten (10) days from receipt of the notice to provide a good faith written response to the Attorney General's determination. The response shall include at a minimum:

- (A) a sworn statement that Respondent is in full compliance with the Assurance;
- (B) a sworn statement providing a detailed explanation of how the alleged violation(s) occurred;
- (C) a sworn statement of what steps Respondent has taken to cure the alleged violation(s); or
- (D) a sworn statement that the alleged violation(s) cannot be reasonably cured within ten (10) days from receipt of the notice, but (i) Respondent has begun to take the corrective steps detailed in the statement to cure the violation(s); (ii) Respondent is diligently pursuing such corrective action with due and reasonable diligence; and (iii) Respondent has provided the Attorney General with a reasonable time table for curing each violation.

Nothing herein shall be construed to exonerate any contempt or failure to comply with any provision of this Order after the date of its entry, to compromise the authority of the Attorney General to initiate a proceeding for contempt, or to compromise the authority of the court to punish as contempt any violation of this Assurance and Agreed Order.

13.25 The parties agree that after entry of this Assurance, any consumer complaints regarding Respondent's business practices received by a State of Tennessee complaint-handling agency will be handled in the normal course of business as similar complaints received by the complaint-handling agency. Any such consumer complaints should be sent to: Fairfield Resorts, Attention: Consumer Affairs, 8427 South Park Circle, Suite 500, Orlando, Florida, 32819. If budget constraints alter the process by which complaints are handled by any State of Tennessee agency, the complaint agency may follow the same procedure being used to handle other complaints. Nothing

herein shall require any entity of the State of Tennessee to expend any funds to handle any complaint in any particularly unique or different manner.

#### **14. COMPLIANCE WITH ALL LAWS, REGULATIONS AND RULES**

14.1 Nothing in this Assurance and the accompanying Order shall be construed as relieving Respondent of the obligation to comply with all state and federal laws, regulations and rules.

#### **15. FILING OF ASSURANCE**

15.1 Following the execution of this Assurance, the Attorney General shall file in the Circuit Court for Davidson County a Petition, Agreed Order and this Assurance for the Court's approval. Respondent hereby waives any and all rights which it may have to be heard in connection with judicial proceedings upon the Petition. Respondent agrees to pay all costs of filing such Petition, Assurance and Agreed Order. Simultaneously with the execution of this Assurance, Respondent shall execute an Agreed Order. This Assurance is made a part of and is incorporated into the Agreed Order. The Respondent agrees that it consents to the entry of this Assurance and Agreed Order without further notice.

#### **16. APPLICABILITY OF ASSURANCE TO RESPONDENT AND SUCCESSORS**

16.1 Respondent and its corporate or other business successors in interest, however organized, agree that the duties, responsibilities, burdens and obligations undertaken in connection with this Assurance shall apply to it, to each of its officers, heirs, directors, managers, agents, assigns, representatives, employees, partners, subsidiaries, affiliates, parents, related entities, joint venturers, persons or other entities they control, manage or operate, Respondent's successors in

interest and assigns, and to other persons or entities acting directly or indirectly on behalf of Respondent and Respondent's successors in interest or assigns.

## **17. NOTIFICATION TO STATE**

17.1 For five (5) years following execution of this Assurance, Respondent shall notify the Office of the Attorney General, in writing, at least thirty (30) days prior to the effective date of any proposed changes in its corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution or subsidiaries, or any other changes in Respondent's status that may affect compliance with obligations arising out of this Assurance.

17.2 Any notices required to be sent to the State or the Respondent by this Assurance shall be sent by United States mail, certified mail return receipt requested or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the Attorney General:

Deputy Attorney General  
Office of the Tennessee Attorney General  
Consumer Advocate and Protection Division  
Post Office Box 20207  
Nashville, Tennessee 37202-0207  
Tel: (615) 741-1671  
Fax: (615) 532-2910

For the Respondent Fairfield Resorts, Inc. and Successors in Interest:

Fairfield Resorts, Inc.  
Attention: General Counsel  
Office of the General Counsel  
8427 South Park Circle, Suite 500  
Orlando, Florida 32819  
Tel: (407) 370-5200

Fax: (407) 370-5222

### **18. FACSIMILE SIGNATURES**

18.1 The parties agree and the Court approves that facsimile copies of a parties' signature may be attached to this Assurance and will constitute an original for the purposes of entering into this Assurance. The original signature page of the parties will be provided to the Attorney General as soon as practicable.

### **19. COURT COSTS**

19.1 All costs associated with the filing and distribution of this Assurance and any other incidental costs or expenses incurred thereby shall be borne by Respondent. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State.

FOR THE ATTORNEY GENERAL OF THE STATE OF TENNESSEE:

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PAUL G. SUMMERS  
Attorney General & Reporter  
B.P.R. No. 6285

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MEREDITH DEVAULT  
Senior Counsel  
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BRANT HARRELL  
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Office of the Tennessee Attorney General  
Consumer Advocate and Protection Division  
Post Office Box 20207  
Nashville, TN 37202-0207  
Tel: (615) 532-9299  
Fax: (615) 532-2910

APPROVED BY:

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MARY CLEMENT  
DIRECTOR  
Division of Consumer Affairs  
Department of Commerce and Insurance  
500 James Robertson Parkway  
5th Floor, Davy Crockett Tower  
Nashville, TN 37243-0600  
(615) 741-4737

FOR RESPONDENT:

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MIKE MOORE, ESQ., MSB 3452  
MIKE MOORE LAW FIRM  
10 Canebrake Blvd. Ste. 150  
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Flowood, MS 39232  
Tel: \_\_\_\_\_  
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Attorney for Respondent

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FRANZ S. HANNING  
President and CEO of Fairfield Resorts, Inc.  
8427 South Park Cir., Suite 500  
Orlando, FL 32819  
Tel: \_\_\_\_\_  
Fax: \_\_\_\_\_